

Creation and operation of industrial parks in Ukraine

1. Participation in the creation of industrial parks

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1. Participation in the creation of industrial parks

Foreign investors may participate in the creation of industrial parks and conduct business within such parks by:

- initiating the creation of an industrial park;
- creating or acquiring an industrial park management company in Ukraine;
- becoming a member of an industrial park.

Related article: Industrial parks in Ukraine: legal and tax aspects

When planning to participate in the creation of industrial parks in Ukraine and to conduct business therein, a foreign investor should take into account the following peculiarities:

A) a management company of the industrial park should be established in accordance with Ukrainian legislation. A foreign investor may either establish and register a company in Ukraine for this purpose or acquire an already established Ukrainian company;

B) the company initiating the creation of the industrial park, the management company, the member of the industrial park may not be founded by:

- citizens of the Russian Federation;
- companies that are registered in the Russian Federation, or related persons of which are registered in the Russian Federation;

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- companies subject to sanctions (international or national), or related persons of which are subject to sanctions;
- companies in which residents of the Russian Federation own more than 10% of shares or are the ultimate beneficiaries.

Note! If the owner of a company participating in an industrial park has been changed, the company must inform the management company of the industrial park within 5 working days.

2. Initiating the creation of an industrial park in Ukraine

A foreign citizen or a foreign company may initiate the creation of an industrial park in Ukraine if they:

- own or lease a land plot designated as industrial land of area from 10 to 1,000 hectares;
- hold a share in a Ukrainian company that owns or leases a land plot designated as industrial land with an area of 10 to 1,000 hectares;
- are not subject to the above-mentioned restrictions set out by the Law.

Ukrainian legislation establishes the rights and obligations of the initiators of industrial parks, except for those assumed under the contracts with the management company and the members. In particular, the initiator is entitled to:

- monitor compliance with the terms and conditions of the contracts concluded by the management company;
- lease (sublease) or alienate immovable property (parts of property) within the industrial park to the management company or the members.

At the same time, the initiator is obliged to:

- carry out the development of the industrial park in accordance with the terms of the agreement on the establishment and operation of the industrial park;
- grant the management company and/or the members rights to land plots, existing engineering and transport infrastructure objects and other facilities located within the industrial park;
- protect trade secrets of the management company;
- not interfere with the ongoing business activities of the management company and the members;
- consider the management company's proposals for granting consent to make essential improvements to its property transferred for use to the management company;
- monitor compliance with the industrial park concept;
- in the absence of the management company, submit semi-annual reports on the results of the industrial park's operation to the Ministry of

Economy;

Note! It is necessary to monitor carefully the fulfillment of this obligation by the management company because the failure to submit such reports within two reporting periods (i.e., currently, within 1 year) can result in the exclusion of the industrial park from the State Register.

- when concluding an agreement on the creation and operation of an industrial park, to stipulate in its terms the engagement of employees (Ukrainian citizens), including those dismissed due to the liquidation of a state or municipal enterprise whose property has been provided for use to the management company, in the activities related to the creation and operation of the industrial park.

3. Creation and registration of industrial parks

The procedure for the creation and registration of an industrial park in Ukraine includes:

1). The acquisition of a land plot or the conclusion of a land lease agreement, or the acquisition of a share in a Ukrainian company owning or using the appropriate land plot.

Foreigners can own or lease industrial land. However, it should be noted that foreign companies may acquire industrial land:

(A) within settlements:

- in the case of purchase of real estate;
- for the construction of real estate for business purposes in Ukraine.

(B) outside settlements: in the case of acquisition of real estate.

While planning the purchase or lease of land for the creation of an industrial park, a foreign investor should pay attention not only to the requirements for the purpose and size of the land plot. It is also necessary to make sure that the land plot does not contain:

- production facilities that have been commissioned during the last ten years preceding the decision to create an industrial park;
- industrial premises that had been in operation for the last five years before the decision to create an industrial park was taken

These requirements do not apply to coal mining companies that have been liquidated, are in the process of liquidation or are scheduled for liquidation.

Note! If it turns out that there are such objects located on a land plot, the newly created industrial park will not be included in the Register of Industrial Parks, and therefore the business will not be able to benefit from the state incentives.

2). The adoption of a decision to create an industrial park.

Such a decision should be set out in writing, as it is provided both for the registration procedures and the procedures for concluding contracts with the management company. It is recommended that the decision should include basic information on the key parameters of the industrial park, i.e., location, information on the initiator, purpose of creation, etc.

3). Development and approval of an industrial park concept.

The concept should contain the following information:

- name of the industrial park;
- the initiator of the industrial park's creation;
- the purpose, objectives and functional purpose of the industrial park;
- location, area of the land plot, and the facilities located on it, including production facilities (if any);
- the period for which the industrial park is to be established;

Note! An industrial park should be established for a term of at least 30 years.

- the requirements for the participants of the industrial park;
- information about the approximate total consumption of energy resources, water, etc., as well as the necessary engineering and transport infrastructure, and a plan for providing the industrial park with the relevant resources;
- a development plan for the industrial park;
- approximate resources (financial, material, technical, labour, natural, etc.) required for the creation and operation of the industrial park, as well as their expected sources;
- the organisational model for the industrial park's operation;
- the expected results of the industrial park's operation;

The initiator may also include other information and plans concerning the industrial park in the concept, but the above-mentioned data must be included.

4). Submission of a copy of the decision on an industrial park creation and its concept to the Ukrainian Ministry of Economy.

Note! The decision and the concept should be filed with the Ministry of Economy within 5 working days from the date of the decision on the Industrial Park establishment.

5). Submission of the documents package for the registration of the industrial park in the Register of Industrial Parks to the Ministry of Economy of Ukraine.

The registration package must contain:

- an application for inclusion of the industrial park in the Register of Industrial Parks;
- an initiator's decision on the establishment of an industrial park;
- the concept of an industrial park;
- an extract from the State Land Cadastre of Ukraine concerning the land plot and documents of title for the real estate located on it (extracts from the register of real property rights of Ukraine, a sale and purchase agreement);
- name of the managing company and the members (if any at the moment of application).

6). Inclusion of the industrial park in the Register of Industrial Parks in Ukraine.

According to Ukrainian law, the process of including an industrial park in the Register of Industrial Parks should not exceed 45 working days from the date of submission of the initiator's application to the Ministry of Economy of Ukraine. If the initiator was denied registration of the industrial park, it can apply to the Ministry of Economy of Ukraine repeatedly.

7). Conclusion of an agreement on the creation and operation of an industrial park with a management company.

The initiator of the conclusion of such an agreement must notify the Ministry of Economy within three days of its conclusion (on the termination of the agreement – on the day of its termination). Information about the management company is included in the Register of Industrial Parks in Ukraine.

8). Conclusion of agreements on the conduct of economic activities within the industrial park between the management company and the members of the industrial park. Such an agreement should include, inter alia, the following conditions:

- priority use of the labour of employees who are citizens of Ukraine;

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- conditions, scope and procedure for the creation and improvement of engineering and transport infrastructure and other facilities at the member's site;
- investment obligations of the participant.

9). Submission through the Ministry of Economy of Ukraine of a list of equipment for the development and operation of an industrial park for approval by the Cabinet of Ministers of Ukraine.

Such a list is necessary for exemption from import duty on equipment and devices imported to Ukraine for the development and operation of an industrial park.

For this purpose, the initiator of the creation (management company, member) of an industrial park submits an application to the Ministry of Economy, to which the following should be added:

- copies of documents evidencing the necessity of importing goods. The initiator of the creation and the management company also provide a copy of the business plan for the industrial (manufacturing) park;
- a list and volumes of goods required by the initiator (management company) for the development of the industrial park or those necessary for the member's economic activity within the industrial (manufacturing) park.

The Ministry of Economy verifies the submitted documents and coordinates with the Ministry of Finance, the State Fiscal Service, and relevant authorities, in particular, that the goods on the list submitted are not produced in Ukraine.